

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:05CR163
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
DANIEL CERNA,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 134). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 26 (drug quantity inconsistent with Rule 11(c)(1)(C) agreement) and ¶ 27 (dangerous weapon enhancement). The Court's tentative finding is that the objection to ¶ 26 is granted and the plea agreement will be honored. The objection to ¶ 27 will be heard at sentencing, and the government bears the burden by a preponderance of the evidence.

IT IS ORDERED:

1. The Court tentatively finds that the Defendant's objection to ¶ 26 (drug quantity) the Presentence Investigation Report (Filing No. 134) is granted, and the objection to ¶ 27 will be heard at sentencing;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 2nd day of December, 2005.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge